

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

MICHAEL BRAZELL, JR
ADC #500711

PLAINTIFF

V.

NO: 5:14CV00328 KGB/PSH

GREGORY SOCIA *et al*

DEFENDANTS

PROPOSED FINDINGS AND RECOMMENDATION

INSTRUCTIONS

The following Proposed Findings and Recommendation have been sent to United States District Judge Kristine G. Baker. You may file written objections to all or part of this Recommendation. If you do so, those objections must: (1) specifically explain the factual and/or legal basis for your objection; and (2) be received by the Clerk of this Court within fourteen (14) days of this Recommendation. By not objecting, you may waive the right to appeal questions of fact.

DISPOSITION

Plaintiff Michael Brazell, an Arkansas Department of Correction (“ADC”) inmate, filed a *pro se* complaint on September 3, 2014. On February 23, 2016, defendants Monica Litzsey and Gregory Socia filed a motion to dismiss, along with a brief in support, claiming Brazell refused to complete his deposition.¹ On March 17, 2016, the Court entered an order directing Litzsey and Socia to provide a list of the fees and expenses they incurred in attending the deposition, and

¹Brazell’s claims against defendant Ross have been recommended for dismissal (Doc. No. 44), and his claims against all other defendants were dismissed without prejudice on October 14, 2014 (Doc. No. 16).


directing Brazell to respond to the motion within 14 days (Doc. No. 48). Litzsey and Socia have submitted an addendum indicating they incurred a \$370.60 court reporter bill, and claiming \$118.80 in mileage costs, for a total of \$489.40 (Doc. No. 49). Although more than 14 days have passed since the Court issued its order, Brazell has not responded to the motion to dismiss.

Rule 41(b) of the Federal Rules of Civil Procedure allows a defendant to move for dismissal for failure to comply with a court order. Based on good cause shown, Brazell's complaint should be dismissed without prejudice as to Litzsey and Socia, subject to being reopened if he pays to the ADC \$489.40 in costs it incurred in attending the cancelled deposition.

IT IS THEREFORE RECOMMENDED THAT:

1. The motion to dismiss filed by defendants Monica Litzsey and Gregory Socia (Dkt. No. 46) be GRANTED and plaintiff Michael Brazell, Jr.'s complaint be DISMISSED WITHOUT PREJUDICE.
2. Brazell's complaint be subject to being reopened if he pays the Arkansas Department of Correction \$489.40, and presents to the Court evidence of the payment, and a files a motion to reopen, within 30 days.
3. The Court certify that an *in forma pauperis* appeal is considered frivolous and not in good faith.

DATED this 15th day of April, 2016.


UNITED STATES MAGISTRATE JUDGE